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OFFICE OF PETITIONS

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Chicago, Illinois 60606

In re Application of
Fijolek et al.
Application No. 09/722,939
Filed: November 27, 2000
Attorney Docket No. 99,837-A

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: **DECISION GRANTING PETITION**
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This application for PTA is in response to Applicants' "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.703(B)" timely¹ filed on February 4, 2005 requesting that the Office adjust the amount of PTA at the time of the mailing of the notice of allowance from a determination of seven hundred and eighty-four (784) days to a determination of eight hundred and seven (807).

Applicants request for reconsideration is **GRANTED**. The Office will adjust the PTA calculation to reflect a determination at the time of the mailing of the notice of allowance of 807 days.

Specifically, applicants assert that the eight hundred and one (801) days of adjustment pursuant to 37 CFR 1.702(a)(1) and the ten days of USPTO delay pursuant to 37 CFR 1.702(a)(2) are accurate. Applicants further assert that the Office erred in holding that applicants were twenty-seven (27) days late in responding within three months to the USPTO notice to file missing parts. Applicants assert that the postcard stamp reflect that the Office received the response to the missing parts on July 9, 2001 not August 1, 2001. Accordingly, applicants assert that the Office erred in assessing too much delay for applicants failure to reply to the notice to file missing parts within three months.

Applicants arguments are persuasive. The Office has reviewed the file and determined that the response to the missing parts notice was actually fully responded to on July 9, 2001 as suggested by applicants. Accordingly, applicants were only four days late in the response.² Accordingly, the correct determination at the time of the mailing of the notice of allowance is 807 (811-4=807) days as suggested by applicant.

After the mailing of this decision, the patent application will be forwarded to the Office of Patent

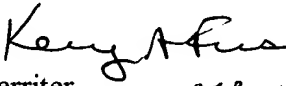
¹Issue fee was paid on February 4, 2005.

²Note that applicants are given three months to reply without a PTA reduction regardless of whether applicant had received a shortened statutory period such as in this case which set two months as the reply period. See 37 CFR 1.704(b).

Publication for a prompt issuance of the patent. Any delays in issuance of the patent will be reflected in the PTA determination provided with the issue notification letter that is mailed approximately three weeks prior to the issuance of the patent.

Applicants have paid the \$200.00 application fee as noted in 1.18(e). No additional fees are required for this decision.

Any questions concerning this decision should be addressed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy.


Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: copy of adjusted PAIR calculation